amendments were adopted, bill read second time and ordered engrossed by the following vote:

Yeas—Senators Avinger, Baker, Broughton, Cole, Dillard, Evans, Ford, Finlay, Fountain, Franks, Gaines, King, Latimer, Ruby, Sayers, Shelley, Word and Mr. President—18.

Nays—Senators Flanagan, Pyle and Rawson—3.

The rule was suspended, bill read third time and passed by the following two-thirds vote:

Yeas—Senators Avinger, Baker, Broughton, Cole, Dillard, Evans, Ford, Finlay, Fountain, Gaines, King, Latimer, Ruby, Sayers, Shelley, Word and Mr. President—17.

Nays—Senators Flanagan, Franks, Pyle and Rawson—4.

Senator Word moved to adjourn until 10 o'clock to-morrow. Lost by the following vote:

Yeas—Senators Baker, Cole, Evans, Franks, Gaines, Latimer, Pyle, Rawson and Ruby—9.

Nays—Senators Avinger, Broughton, Dillard, Ford, Flanagan, Fountain, King, Sayers, Shelley, Word and Mr. President—11.

Senator Broughton moved to adjourn till 9:30 o'clock to morrow.

Senator Baker moved a call of the Senate. Call ordered.

Senator Ruby made a point of order, viz., that a call of the Senate could not be ordered on a motion to adjourn.

Point sustained, and the Senate adjourned by the following vote till 9:30 o'clock to-morrow:

Yeas—Senators Avinger, Broughton, Cole, Dillard, Evans, Finlay, Flanagan, King, Pyle, Rawson, Sayers and Mr. President—12.

Nays—Baker, Ford, Fountain, Gaines, Latimer, Ruby, Shelley and Word—8.

SENATE CHAMBER,
AUSTIN, TEXAS, April 2, 1873.

Senate met pursuant to adjournment. Roll called; quorum present. Prayer by the chaplain.

On motion of Senator Avinger, the reading of the journal of yesterday was dispensed with.

Senator Ruby submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Engrossed Bills have examined and find correctly engrossed the following bills:

Senate bill No. 201, "An act to amend section three of an act entitled an act supplementary to an act to provide for the payment of the public debt of the State of Texas, approved November 13, 1871."

Senate bill No. 187, "An act for the relief of R. B. Reagan."

Senate Bill No. 109, "An act to incorporate the town of Giddings, in Washington county."

Senate bill No. 170, "An act to incorporate the El Paso Real Estate, Trust and Immigration Company."

G. T. RUBY, for Committee.

Senator Shelley presented a petition for the relief of James Waul. Read and referred to the Committee on Private Land Claims.

Senator Pyle presented a petition from the citizens of Hill county, asking for a new county. Read and referred to the Committee on Counties and County Boundaries.

Senator Latimer, chairman of the Committee on Roads, Bridges and Ferries, submitted the following reports:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Roads, Bridges and Ferries, to whom was referred House bill No. 429, to be entitled "An act to authorize H. B. Boston, A. Hamilton and R. B. Hudson, to erect a pontoon bridge over the Guadalupe river, at the town of Clinton, in De Witt county, Texas," have carefully considered the same, and instruct me to report the bill back to the Senate, and recommend that it do pass.

H. R. LATIMER, Chairman.

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Roads, Bridges and Ferries, to whom was referred House bill No. 380, entitled "An act to incorporate the South Sulphur Bridge and Turnpike Company," have carefully considered the same, and instruct me to report it back with the recommendation that it do pass.

H. R. LATIMER, Chairman.

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Roads, Bridges and Ferries, to whom was referred House bill No. 214, a bill to be entitled "An act to establish a ferry across Big Cypress," have carefully considered the same, and instruct me to report the bill back and recommend its passage.

H. R. LATIMER, Chairman.

Senator Swift, chairman of the Committee on Claims and Accounts, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Claims and Accounts, to whom was referred House bill No. 545, "An act making an appropriation to pay F. E. McManus one month's salary as Judge of the Fifteenth Judicial District of the State of Texas," have had the same under consideration, and I am instructed to report it back with the recommendation that it do pass.

W. H. SWIFT, Chairman.

Senator Shelley, chairman of the Committee on Finance, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Finance, to whom was referred House bill No. 254, entitled "An act to authorize the County Court of Upshur county to issue interest-bearing bonds, to finish paying for the building of the court house of said county, and to levy and collect a tax to pay the same," have carefully considered the same, and instruct me to report the bill back, and recommend that it do pass.

N. G. SHELLEY, Chairman.

Senator Avinger, chairman of the Committee on Counties and County Boundaries, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Counties and County Boundaries, to whom was referred Senate bill No. 223, "An act to submit the permanent location of the county site of El Paso county to a vote of the people of said county," after duly considering the same, have instructed me to report the bill back and recommend its passage.

H. J. AVINGER, Chairman.

Senator Word introduced a bill to be entitled "An act to amend the charter of the town of Palestine, in Anderson county." Read first time and referred to the Committee on State Affairs.

Senator Sayers introduced a bill to be entitled "An act to incorporate the Burleson Male and Female Academy, in Bastrop county." Read first time and referred to Judiciary Committee No. 2.

Senator Ball introduced a bill to be entitled "An act providing for the location of unclaimed certificates, and fixing locator's interest therein." Read first time and referred to the Committee on Public Lands.

Senator Shelley introduced a bill to be entitled "An act for the relief of the heirs of P. H. Coe, deceased." Read first time and referred to the Committee on Private Land Claims.

The following message was received from his Excellency the Governor:

EXECUTIVE OFFICE, STATE OF TEXAS,
AUSTIN, April 1, 1873.

To the Honorable Senate and House of Representatives of the State of Texas:

GENTLEMEN: I have the honor to inform you that the following named acts and resolutions have been received by me, and approved, to-wit:

House bill No. 372, "An act to amend an act amendatory and supplementary to an act to incorporate the city of Dallas, approved April 20, 1871," approved March 13, 1873.

Senate bill No. 63, "An act to prohibit the sale of intoxicating or spirituous liquors in the vicinity of Red Rock, in the county of Bastrop," approved March 13, 1873.

Senate bill No. 130, "An act to incorporate the Excelsior College, in Bastrop county," approved March 13, 1873.

Senate bill No. 15, "An act to incorporate Rusk Masonic Institute, located in Rusk, Cherokee county, Texas," approved March 14, 1873.

Senate joint resolution No. 10, "A joint resolution requiring Jacob Kuechler, Commissioner of General Land Office, to cause to be published certain land certificates found in the office when he took possession of same," approved March 14, 1873.

Senate joint resolution No. 7, "Joint resolution in reference to the interment of the Texas soldiers who fell at the battles of Glorietta and Val Verde, and also of those who were buried at Socorro, Albuqurque and Santa Fé in New Mexico during the late war," approved March 14, 1873.

House bill No. 57, "An act to prohibit the sale of intoxicating or spirituous liquors within one mile of the institution of learning situated at Caledonia, in Rusk county, Texas," approved March 14, 1873.

House bill No. 255, "An act to prohibit the sale or gift of intoxicating or spirituous liquors within two miles of Leesburg Institute, in Upshur county, Texas," approved March 14, 1873.

House bill No. 361, "An act to prohibit the sale or disposition of spirituous, vinous or other intoxicating liquors within three miles of the town of Leesburg, in Gonzales county," approved March 15, 1873.

House bill No. 283, "An act to set apart one-half of the public domain for the support and maintenance of public schools," approved March 18, 1873.

House bill No. 436, "An act for the relief of the Eastern Texas Railroad Company," approved March 19, 1873.

Senate bill No. 131, "An act reimbursing Bastrop county, and appropriating the sum of two hundred and twenty-five dollars for that purpose," approved March 20, 1873.

House bill No. 143, "An act to incorporate the Teutonia Association of Fayette county," approved March 21, 1873.

House bill No. 299, "An act reincorporating the town of Liberty," approved March 21, 1873.

Senate bill No. 191, "An act making an appropriation for the *per diem* pay of the members and the *per diem* pay of the officers and employés of the Thirteenth Legislature of the State of Texas," approved March 24, 1873.

House bill No. 224, "An act to incorporate the State Bank of Texas, Galveston," approved March 25, 1873.

House bill No. 15, "An act to authorize the building of a free public bridge across Big Cypress, in the corporate limits of the city of Jefferson," approved March 28, 1873.

House bill No. 68, "An act to authorize and require sheriffs and constables to serve process issued by either House of the Legislature, or by any committee thereof," approved March 28, 1873.

House bill No. 338, "An act to incorporate the town of Quitman, in Wood county," approved March 28, 1873.

Senate bill No. 119, "An act authorizing the Commissioner of the General Land Office to employ additional draftsmen and clerks," approved March 28, 1873.

House bill No. 374, "An act amendatory of an act to reincorporate the city of Navasota," approved March 28, 1873.

Senate joint resolution No. 21, "Joint resolution awarding Winchester rifles to certain persons," approved March 28, 1873.

House bill No. 435, "An act to authorize the county of Gonzales to build a bridge across the Guadalupe river, at or near the town of Gonzales," approved March 28, 1873.

House bill No. 64, "An act in aid of the financial condition of Cameron county," approved March 29, 1873.

House bill No. 437, "An act to authorize the County Court of McLennan county to levy a special tax for the purpose of building a court house and jail, and to provide for the safe keeping and disbursement of the revenue arising therefrom," approved March 29, 1873.

House bill No. 339, "An act to authorize the county of Dallas to issue bonds," approved March 29, 1873.

House bill No. 315, "An act to authorize the County Court of Goliad county to levy and collect a special tax for the purpose of building a court house," approved March 29, 1873.

Senate bill No. 49, "An act supplementary and amendatory to an act entitled an act to incorporate the Galveston Medical College Hospital, approved May 31, 1871," approved March 29, 1873.

House bill No. 233, "An act regulating elections," approved March 31, 1873.

House bill No. 532, "An act to amend an act regulating elections, passed at the present session of the Legislature," approved April 1, 1873.

The following bills, not having been returned by me to the House in which they originated, within the time prescribed by the Constitution, have become laws without my approval, to-wit:

House bill No. 202, "An act for the relief of Wm. J. Russell," passed February 19, 1873.

House bill No. 311, "An act to make legal and valid an election for mayor, alderman and constable of the town of La Grange," passed March 3, 1873.

House bill No. 212, "An act to authorize Alexander Inglish to erect a toll bridge over Bois d'Arc Creek, two miles east of the town of Bonham, in the county of Fannin, Texas," passed March 3, 1873.

House bill No. 160, "An act to incorporate the town of Greenville, in Hunt county," passed March 3, 1873.

House bill No. 341, "An act making an appropriation to defray the contingent expenses of the first session of the Thirteenth Legislature of the State of Texas," passed March 5, 1873.

House bill No. 127, "An act to authorize Isaac Franklin to erect a pontoon bridge over the San Antonio river, in the county of Goliad, Texas," passed March 6, 1873.

Senate bill No. 133, supplement to an act entitled "An act to incorporate the Western Narrow Gauge Railway," passed March 11, 1873.

House bill No. 309, "An act to repeal the third, twenty-sixth and twenty-seventh sections, and to amend the first and eighth sections of an act entitled an act to provide for the enrollment of the militia, the organization and discipline of the State guards, and for the public defense, approved June 24, 1870, and to repeal the first section of an act to amend an act to provide for the enrollment of the militia, the organization and discipline of the State guards, and for the public defense, approved June 24, 1870, approved April 12, 1871," passed March 18, 1873.

Respectfully,

EDMUND J. DAVIS, Governor.

House bill No. 53, "An act relating to appeals to the Supreme Court from interlocutory judgments in the district courts," together with the report of the committee, recommending that the bill do not pass, was taken up, and the bill read second time.

Senator Word moved to adopt the report.

On motion of Senator Fountain, the consideration of the bill was postponed until Friday next at 12 o'clock M., and made special order for that hour.

A message was received from the House, informing the Senate that the House had passed Senate bill No. 7, "An act to incorporate the Colorado, Austin and Lampasas Railway Company," with amendments by the House.

Senator Dillard, chairman of the Committee on Privileges and Elections, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: The undersigned, members of your Committee on Privileges and Elections, beg leave to submit to the Senate the following report in the matter of Charles Stewart, con-

testant, claiming the right to sit as Senator elect from the Fourteenth Senatorial District, comprising the counties of Harris and Montgomery, against J. G. Tracy, the sitting member from that district.

The consideration of this matter has been a severe and almost incessant labor since the organization of this Thirteenth Legislature, involving the examination of nearly one hundred witnesses, and the production of more than two hundred and fifty printed pages of testimony.

In submitting this our report we shall confine ourselves to the relation of the salient points in the evidence without comment, and our conclusions thereon without argument, as the printed testimony accompanies this report.

We shall not confine ourselves to the order of the allegation in the memorial of contestant, or the response of contestee in this report, but pursue that order which it seems to us is perhaps more natural, and better displays the entire case, and each particular feature in its proper logical position.

And first in order is the subject of the general frauds as to registration.

Upon this subject the testimony of witnesses of unquestioned veracity, intelligence and reputation compels the conclusion that from its inception the registration of Harris county has been under the control and management of men of the Republican party of extreme partisan prejudices, and has been by them prostituted to the accomplishment of party success at the sacrifice of every other consideration, and even the law itself, which was at best but poorly framed either to prevent or detect the grossest unfairness and the most dangerous and destructive frauds. In the registration of voters during the registration immediately preceding the election in 1871, for members to Congress, it cannot be doubted that fraud most palpable was openly perpetrated by the registrar. He conducted the registration for most part in secret, admitting none but the applicant into the room, which seems to have been guarded by armed men. He surrounded himself with armed negro policemen, and after perhaps the second day of registration kept both the entrance and exit doors of the office closed and strictly guarded, and caused citizens who approached a window of the room, and through which they could see into the office, to be driven away.

It was, however, observed during the first day or two, while the entrance door remained open, that every white applicant not personally well known to the registrar was required to come fully and strictly within the provisions of the law. Blacks were uniformly registered by him without identification or even question, except as to their names, and many of whom he registered upon the presentation of a scrap of paper with a name written upon it, without even asking the name of the bearer.

It is already proven that during the registration he left gaps of from one to fifty between certificates consecutively issued, amounting in the aggregate to hundreds that were ascertained and directly proven. To what extent this was perpetrated before it was discovered we are of course unable to approximate. The purpose of these gaps is exposed by the testimony of several witnesses, by whom it is clearly established that during the election in 1871 the issuance of registration papers was going on, and in a private room of a building other than the court house, but without explanation at all it is palpable that such conduct could only be accounted for upon the hypothesis of an unlawful and fraudulent intent.

This registrar is proven to have been an active and zealous member of the Republican party, and an attaché of the Houston *Union* office, then, as now, the leading Republican organ of the district, and perhaps the State; and here we have the key which opens the door to light upon other points in the evidence which might be otherwise inexplicable.

The registration immediately preceding the election of November, 1872, appears to have been fairly conducted, and to all intents according to law, if we except the single fact that a few men of very short residence in the country, and who could not well have been so extensively acquainted, and whose characters could illy bear the test of "credible citizens of the country," were permitted to vouch for very nearly every colored man or boy who applied for registration, and even where it appeared that they had to ask the name and residence of the applicant before assuring the registrar of his (the applicant's) qualifications as a voter.

With this exception the registration was conducted with at least formal fairness. The proof, however, seems to settle the fact that every pretence of fairness ceased with

the ten days registration, for immediately upon the setting of the board of appeals began a display of such shameless partisan conduct by the presiding officer of the board, sustained by one of his associate judges, as forbade the hope of a fair and impartial administration of the law of appeals and revision.

C. B. Sheridan, one of the board, who had been for the previous ten days engaged as one of the principal vouchers and runners of the Republican party in bringing up negroes for registration, with an assurance which gave token of his purposes, assumed the presidency of the board, and, supported by his political ally on the board (Fisher), at once began a course of lawless and arbitrary usurpation, which continued throughout the session of the board and during the whole of the election.

He refused to allow the Democratic member of the board, or any one else, to ask the colored applicants any questions whatever, claiming the precedence of his presidency, and insisting upon the etiquette of the bench.

Although urged to pursue the requirements of the law, he refused to allow them to be asked why they had not applied to the registrar; he refused to require colored applicants to swear to their qualifications, or to be identified as residents, or in any way known to the law to cause them to establish their right to register.

He refused to strike from the registration list the names of convicts, dead men, or those who had removed, although a list of forty or fifty names was presented to him by one of the board, and he was informed that many more could be furnished; he registered fifty or more colored men who confessed to have been absent from the county for more than six months, and hundreds who had been absent for from one to six months, or gave the names of other counties as their residence.

He conducted the session of the board of appeals precisely as though it had been but a continuation of registration, and not a tribunal instituted to hear appeals and revise the lists, so as to accomplish the registration of all the legal voters, and purge the list of such names as were not lawfully upon it.

He controlled the election with a like partisan spirit, making everything bend to the accomplishment of his purpose, viz., the success of his party ticket.

He allowed from fifty to seventy-five colored men to

vote upon registration certificates bearing names wholly different from the names which they gave as their names.

He allowed from ninety to one hundred and fifty colored men to vote on presenting a number written on a scrap of paper, which referred to a like number on the registration books, without their being sworn according to law or identified by any person, and when they were unknown to the officers of the election.

He allowed two hundred and forty-one men, of whom about two hundred and twenty-five were colored and the remainder white, to vote on affidavit without examining the registration books or satisfying himself, or allowing the other officers of election to satisfy themselves, that these persons were registered voters and entitled to cast their votes in the election, of which number at least eighty-three were not registered voters, and of whom all but about five or six were colored men.

He allowed at least as many as twenty colored men to vote who presented registration papers from other counties than the counties of Harris or Montgomery.

It further appears by the testimony of various witnesses that particular or individual instances of illegal votes, cast by colored voters to the number of at least one hundred and forty-three, were polled by minors, non-residents and one convict, and six colored men voting on numbers covered by some of the gaps mentioned in the registration of 1871, making one hundred and forty-nine votes which were unlawfully polled.

The compiled returns of the election show that 4175 votes were counted, while the evidence on the other hand exhibits the startling fact that the registration lists showed after the election that only 3883 registered voters had cast their ballots, to which, when you have added all those who voted on affidavit whose names are on the registration list, viz., one hundred and fifty eight, we have only 4041 votes cast: and of these last one hundred and fifty-eight mentioned, at least ten or fifteen were checked off the registration list and included in the 3883, so that it can scarcely be possible that more than 4030 legal votes were polled. To account for this discrepancy of one hundred and forty-five votes is a task we cannot undertake certainly to accomplish. In this particular connection, we deem it our duty to call the attention of the Senate to the

evidence which has been elicited as to a proposition to "stuff" the ballot box.

As appears, it is positively sworn by one witness that the presiding officer, Sheridan, proposed to do it in the interest of the Republican candidate. This Sheridan positively denies, as also some subsequent conversation, which it is sworn he had on the subject.

In rebuttal it is indubitably proven that he not only did make the proposition, but that the subsequent conversation which he denied was had.

After carefully weighing the evidence we are forced to the conclusion that Sheridan's denial is not entitled to equal weight with the countervailing testimony.

In connection with other evidence we must believe that the ballots in the box containing the first two days' voting, which was last counted, had been fraudulently increased. The extent is a question which we cannot determine definitely.

It appears that the registration list, while in the hands of the registrar, had been "worked upon" after the election, and for what lawful purpose this could have been necessary we cannot conceive.

It appears conclusively that during registration, and particularly election, large numbers of strange colored men were in Houston; that they came by all the converging railroads, and from the adjoining counties, many of whom were recognized as residents of other counties, and who, it can scarcely be doubted, voted; and, arriving at the voting population of Harris county by every test which we can apply, viz., the census report and the direct testimony of witnesses who were thoroughly acquainted, we think it satisfactorily established that from three hundred and fifty to four hundred more colored men voted in that election than are resident citizens entitled to vote in that county.

The evidence shows clearly that very nearly all of the colored voters (four or five excepted) voted the Republican ticket and for the contestee.

We think the main facts have been stated in the foregoing, and we conclude by saying that as it appears by the compiled returns exhibited in evidence, the contestant has received 2496 votes, which are not denied to be legal votes, and the sitting member has received 2823 votes, of which at least 461 votes, besides the excess of

ballots in the ballot box which were counted were illegal, and should be deducted from the votes given to the contestee, it necessarily follows that the contestant has a majority over the contestee of 134 votes.

We therefore recommend the adoption of the following resolutions, viz.:

1. *Resolved*, That the sitting member, J. G. Tracy, not having received a majority of the legal votes cast for Senator of the Fourteenth Senatorial District at the general election in the counties of Harris and Montgomery, in November, 1872, is not legally entitled to retain his seat in this body as Senator for the fourteenth district.

2. *Resolved*, That Charles Stewart, contestant, having received a majority of all the legal votes cast for Senator in the Fourteenth Senatorial District, at the election in November, 1872, is the legally elected Senator therefrom, and entitled to sit in this body as such.

J. E. DILLARD, Chairman.

Senator Fountain, of the same committee, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: The undersigned members of your Committee on Elections, to whom was referred the memorial of Charles Stewart, contesting the seat of James G. Tracy, as the Senator from the Fourteenth Senatorial District, having examined and considered the evidence, presented herewith and made a part of their report, beg leave to submit to the Senate the following facts in the case:

The election was held on the fifth, sixth, seventh and eighth days of November, A. D. 1872, by ballot, and under the provisions of "An act to provide for the mode and manner of conducting elections in this State," approved August 15, 1870. The Fourteenth Senatorial District is composed of the counties of Harris and Montgomery. The whole number of votes cast for Senator at that election was 5319, of which the sitting member, J. G. Tracy, received 2823 votes; and the contestant, Charles Stewart, received 2496 votes; as the same were returned by the judges of election to the returning board. Thus showing for the sitting member a majority of three hundred and twenty-seven votes. In the county of Harris, the majority of the sitting member was two hundred and forty-eight; and in Montgomery county, he received a majority of seventy-nine.

The notice of contest under which the testimony was taken, was served on the returned member November 18, 1872, within ten days after the election, and an answer thereto was filed, containing a general and specific denial of each allegation.

The taking of testimony was commenced by agreement between the parties on the seventeenth day of December, 1872, and was concluded on the twelfth day of March, 1873. One hundred and twenty-one witnesses testified before your committee, or their depositions were filed. Upon this evidence your committee proceeded to determine the case. The amplest opportunity for argument and investigation being allowed both parties.

The contestant alleges that a sufficient number of fraudulent votes were cast for the sitting member to overcome his majority of three hundred and twenty-seven. That gross frauds and irregularities were perpetrated throughout the election; and he makes general allegations of irregularities. These charges—contained in his eighteenth allegation—are so general, vague, indefinite, extraneous and superfluous, as to scarcely require, at the hands of your committee, a passing notice. The law does not allow official irregularities to vitiate an election. On the contrary, all the leading cases cited in Brightley's Digest of Contested Elections, decided by the courts and Congress, go to sustain the elections as returned, if there is no evidence adduced that there was a deliberate purpose to subvert the will of the voters, and to deprive them of the expression of their free choice in the exercise of their right of suffrage; and that such purpose was accomplished. But this allegation does not even charge official irregularities. It charges "all irregularities committed by officers holding elections," and all "other violations of law."

Officers are men, and may be irregular in their habits and morals, and may also be violators of law; but your committee cannot be required to look into questions outside of and beyond their jurisdiction; nor to attempt to make an investigation of any charge that is not legally, clearly and specifically set forth. But it is alleged that more than fifty men voted for the sitting member in Harris county, and afterwards voted for him in Montgomery county. Here is a direct specification which, if proven, would take from the sitting member the number of illegal

votes so cast, and reduce his majority to that extent. It will be borne in mind that the task is with the contestant to establish affirmatively, by sufficient and proper evidence, the frauds which he alleges, and which have resulted in the return of the sitting member instead of himself; to correct and purge the poll, as he claims to do, by subtracting from the number of votes counted for the sitting member, and that such vote was illegal by reason of some want of qualification as an elector on the part of the person voting. But an examination of the testimony which has been furnished, and on which the Senate is called to act and decide, exhibits a most extraordinary deficiency in all these particulars. It is sought to establish the facts of the first allegation by parol and hearsay testimony; this is hearsay evidence, as will be shown, of a very poor character. If the same men voted in Harris and Montgomery counties, the best evidence of that fact would be the poll books of those counties kept at the election. These are made by law matters of formal record, and the truth or falsity of the allegation could be proven by their introduction and examination. The contestant did not cause these poll lists to be produced; but about the twentieth of December, 1872, he employed a colored man named Ben. Dupree to go into several counties to obtain hearsay evidence in regard to the conduct of the election. It will be noticed that the contestant employed Dupree after both parties had by agreement commenced to take testimony, but the sitting member had no notice of Dupree's errand. The contestant admits that he employed Dupree as a detective, and paid him to "ferret out frauds." Dupree was brought before your committee as the principal witness to sustain the first allegation. He states under oath (see his testimony, pages 47–51), that at the instance of the contestant, and being in his employ, he went to Austin, Fort Bend, Montgomery and Grimes counties; that he conversed with eighty-three persons, mostly strangers to him, and obtained their confessions in regard to frauds practiced in the election; he performed this extraordinary feat of detection in thirteen days. That while in these counties he found and obtained the verbal confessions of thirty-five men, who all said they had voted in Harris and Montgomery counties; their names are, Neilus Pheonox, Nelson Magowan, Prince Davidson, Mac Brackens, Allen

Dupree, Henry McCray, Cornelius Williams, Granville Martin, Lewis Harris, Cornelius Felder, Fred McCray, Tom Beaver, Harvey Sanders, Simon Johnson, Tom McGrew, James Robinson, Tom Fossitt, William Glenn, Jake Griffith, Jesse Roberts, Eli Gordon, Joe Shannon, Gris Lewis, John Merckles, Hilart King, Jack Rankin, Saber Felder, Ben Felder, John Nobles, Jack Mayfield, John Boot, William Jones, Joe Ford, John McGrew and Lewis Oglesty.

Dupree testifies that he had a little book in which he took down the names of these confiding strangers who so gushingly took him into their confidence, and admitted to him that they had each committed a felony. Of course Dupree testifies that these thirty-five confiding strangers told him they had voted the Republican ticket, and this is the only evidence to sustain the first allegation.

In rebuttal, the first witness on the part of the sitting member, Eli Gordon (page 200), testifies that he never told Dupree he had voted in Harris and Montgomery counties—he is one of the confiding strangers that Dupree testifies to; he swears positively that he never voted in Montgomery county; and, to corroborate his testimony, it is shown by the poll list of Montgomery county, introduced as evidence by the sitting member, that no such person as Eli Gordon voted. Yet Dupree swears that Gordon did vote in both counties, and he knows he voted, for he told him so. If Gordon did tell Dupree so, he told a lie, for the poll list is better evidence than his oath. But your committee are of the opinion that it is Dupree that has sworn falsely, and this opinion is confirmed by the testimony of the next witness, Fred McCray. Dupree swears that McCray told him that he (McCray) had voted the Republican ticket in Harris and Montgomery counties; McCray is another of Dupree's confidence men; he, however, not only positively denies having any such conversation with Dupree, as is alleged (see page 241), but swears that he did not vote either in Harris or Montgomery counties. This testimony is corroborated by that of A. W. Morris, judge of election in Montgomery county, who testifies (page 200) that Fred McCray did not vote in Montgomery county.

Again, Dupree testifies that Mac Bracken, who he says is a minor, told him he voted in Harris and Montgomery counties, and voted the Republican ticket. Mac Bracken

swears (page 206) that he is twenty-eight years of age; that he never had any such conversation as is alleged with Dupree; that he did not vote in Montgomery county; and his testimony is corroborated by the poll list, for his name does not appear on it. Frank Stewart and Simon Johnson both testify (pages 208, 209) that they never had any such conversation with Dupree as he testifies to; that they did not vote twice, and never told Dupree they did. Dupree swears he had a similar conversation with Joe Shannon. It is in evidence (pages 201, 210, 211) that Shannon is dead, and has been dead nearly two years. Yet Dupree swears he has had a conversation with Shannon since the election. The name of Joe Shannon does not appear on the poll list of Montgomery county; and A. W. Morris, judge of election in Montgomery county—and according to the evidence, a good Democrat—testifies that Joe Shannon did not vote at the election. It was his duty to mark the letter V after the voters' names when they had voted. Dupree swears that Tom Fossitt had conversed with him, and confessed that he (Fossit) had voted the Republican ticket in Harris and Montgomery counties. His conversation must have been with Fossitt's ghost, for it is in evidence before your committee (pages 213, 214) that Tom Fossitt was taken sick on the twenty-eighth or twenty-ninth of October, 1872, and did not afterwards leave his bed alive; he died on the eleventh of November, and was buried. An examination of the poll list of Harris and Montgomery counties develops the fact that no such person as Tom Fossitt voted in either county. Your committee also direct your attention to the testimony of John Black (page 201), Martin Gentry (page 204), Joe Busby (page 202), Simon Johnson (page 208), Frank Stewart (page 209), Richard Brock (page 212), George Lynch (page 213), Frank Vance (page 214) and Taylor Burke (page 215), all of whom contradict Dupree in the most positive manner.

Also to the testimony of H. E. Perkins (page 192), who testifies that he examined the poll list of Montgomery county, and that but five names of the whole list sworn to by Dupree as having voted in Harris and Montgomery counties, can be found on the poll list.

Your committee having fully considered the testimony of Dupree, and the rebutting testimony, are forced to the conviction that Dupree committed deliberate perjury, and

having reached that conclusion, they naturally seek for his motive, and they believe they discover that motive in the evidence.

Referring to the testimony of Madison Simington (page 194), it will be seen that Simington was approached by Dupree, who said to him that the contestant had offered him (Dupree) five hundred dollars, and two dollars per day to get up this evidence. Dupree wanted Simington to go in with him," and assist him in getting up the evidedce, and he offered to divide with Simington. But Simington refused, and Dupree requested him to say nothing about the conversation. Simington further testifies that he subsequently had a conversation with the contestant, who asked him if he had a conversation with Dupree, or had heard Dupree say anything about him. Simington repeated what Dupree had said, and then the contestant laughed, and admitted what Dupree had said was true. Here we have Dupree's motive. He has been bought and paid for, but his work is fatally defective. He should have satisfied himself, before he went into this wholesale perjury business, that the names of the men he swore to were on the poll lists of the election, but he failed to do this; and when he has sworn that thirty-five men told him they had voted in Harris and Montgomery counties, he is confronted with the record, the poll list, and we find that thirty of the alleged voters are not on it. Now, which are we to believe, Dupree's hearsay testimony or the record? And if we find that Dupree has testified falsely in regard to the thirty voters, then can we believe that he has testified truthfully in regard to the balance of the eighty-three? As his testimony bears on other allegations, and as we believe that it is not worthy of credence, we shall hereafter give it no consideration; and we are led to adopt this course because, first, of its internal evidence of untruth; and second, because the statute governing contested elections prescribes, in exact terms, the character of evidence that is admissible. It says "the examination shall be conducted according to the rules of evidence." (Paschal's Digest, Article 3611, p. 587.) Therefore, hearsay testimony of this character is clearly inadmissible. Not only is hearsay testimony not admissible on legal principles, but sound policy requires that in cases of contested elections it should not be received. Once let it be recognized that the result of an

election may be changed or altered by hearsay testimony, and no election whatever can stand. And when we add to this the fact that if hearsay testimony were received, there would be no end to the evidence, to say nothing of the frauds it would engender in contested election cases, the necessity for its exclusion becomes imperative.

The Hon. T. L. Harris, in speaking of hearsay testimony, in Archer v. Allen, for a seat in Congress, forcibly remarked: "There is some testimony that certain persons said that they had heard another man say he had voted for Mr. Allen when he had no right to vote. But are we to disfranchise a congressional district of a hundred thousand inhabitants on hearsay testimony that would not be received in a magistrate's court when a shilling was in controversy?" (App. to Cong. Globe, 1st Sess. 34th Cong., Vol. 33, p. 929.)

And the minority of the committee, too, in its report of the same case (Archer v. Allen, p. 16), well and admirably say: "Next, as to Alfred Cowden, the only evidence is that he was heard to say that he had voted at the election; that he had voted for Allen; that his vote had elected him, etc., and that he was not of age at the time. This evidence the undersigned are clearly of the opinion is hearsay evidence of the worst sort. It is no evidence at all; it would not be received as evidence in any court, and it never should be received in cases of contested elections before this house, for by the admissibility of such evidence it would be the easiest matter in the world to set aside any close election and defeat the will of the majority by getting persons to say that they had voted illegally for the man whom perhaps they had used their greatest efforts to defeat. Falsehoods, where there is no solemnity of an oath, are often resorted to in elections in canvassing before the people against a candidate before an election, as all of us perhaps well know; and who, that would tell a lie before an election, would not do the same thing after it, if he could thereby effect the same object?"

But if there was any room for doubt on this subject of hearsay testimony, that doubt must be forever dispelled by the judgment of Chief Justice Marshall, in 7 Cranch's R., 295-6. He there holds:

"That hearsay evidence is incompetent to establish any specific fact which is in its nature susceptible of being

proved by witnesses who speak from their own knowledge. * * * * * *

"It was justly observed by a great judge that 'all questions upon the rule of evidence are of vast importance to all orders and degrees of men. Our lives, our liberty and our property, are all concerned in the support of these rules, which have been matured by the wisdom of ages, and are now revered from their antiquity and the good sense in which they are founded. One of these rules is that hearsay testimony is in its own nature inadmissible. That this species of testimony supposes some better testimony which might be adduced in the particular case, is not the sole ground of its exclusion. Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, combine to support the rule that hearsay evidence is clearly inadmissible.' "

The testimony of Dupree, therefore, viewed in this light, even did it not bear internal evidence of untruth, and were it not contradicted by a multitude of witnesses, is clearly inadmissible in this case.

It would be a most dangerous precedent, in investigations of this kind, as well as a departure from one of the very elementary principles of evidence, to trust to any but the most absolute testimony of a third party as to the character of a vote given by an elector, when that elector himself is a competent witness to the fact, and could be called upon by the contestant to give his deposition. In this connection your committee are reminded of the fact that this has been done in only one instance by the contestant (in the case of Miles Kennedy), although he had abundant opportunity of doing so.

The second allegation, that more than four hundred men had voted for the sitting member in Harris county, who at the time of voting were not and never had been citizens or residents of the Fourteenth Senatorial District, is not sustained by the evidence. The contestant sought to prove by inference that such might have been the case, by introducing witnesses who testified that a number of colored men came into Houston on the different railroad trains entering that city during the days of election. But it is nowhere in evidence that the number of colored men entering the city on those days exceeded the usual number of arrivals on other days; neither is it shown that any of these men voted for the sitting member, or voted at all.

And it certainly is not shown that they were not all registered and legal voters. Houston, the county seat of Harris county, where the election was held, is a city of some 18,000 inhabitants, and is the terminus of several railroad lines. A great many persons enter the city on the trains every day, and we can discover no reason why the fact, if such a fact were proven, that a larger number came in on one day than another should be regarded as evidence of fraud in the election.

It was incumbent on the contestant to prove the illegality of each vote that was illegally given as alleged in the second allegation. This he has failed to do.

The third allegation charges fraudulent registration in Harris county. The proper time and place to have made this charge was before the Board of Appeals and Revision (section fifteen of registration act, approved July 11, 1870); and no objection having been made before that board, it is to be presumed that the registration was legal, and all the evidence before your committee tends to establish that fact. The only evidence against the legality and fairness of the registration is based on the opinions of several witnesses, who *think* that the registration was not fair. No evidence of specific violation of the law is offered.

The fourth allegation is, that more than two hundred men voted in Harris county for the sitting member upon affidavits that they were registered and qualified voters, and had lost their registration papers, whose names do not appear on the registration lists. It appears from the evidence that two hundred and twenty-eight men voted on affidavits that they had lost their registration papers. It is not in evidence how many, if any, of these voted for the sitting member. Yet admitting that a majority of these men voting on affidavits voted for him, it in no manner affects the legality of his election, unless it be shown that the votes were it legal for other cause.

The law makes it the duty of the judges of election to receive the ballot of every person whose name appears on the registration list. Should he not be satisfied as to the identity of the voter, he may require him to make affidavit to the effect that he is the person registered. (Sections 5 and 17, election law.)

Thus voting upon affidavit is not only legal, but is required by the law in cases where doubt exists; and the

fact that two hundred and twenty-eight voters were required to make affidavit as to their right to vote, is in itself strong evidence that the election was conducted strictly in accordance with the law. But it appears that of the two hundred and twenty eight men who voted on affidavits, twenty-eight do not appear on the registration books of Harris county; but it is nowhere shown that these voters were not legal and qualified electors of the State or district, who were temporarily in Houston during the election, and who, not being registered voters of Harris county, but desiring to vote for such officers as the law specifically gave them a right to do. That they were not registered voters of Harris county the record proves, but it does not prove that they were not legal voters of the State or district. Neither is it shown that any of these men whose names do not appear on the registration list voted for the sitting member or voted for Senator. It is to be presumed that they did not; their affidavits are evidence—and the very evidence required by law—to prove that they were legal voters of the State, and until rebutted this evidence must stand; and there being no evidence that they voted for the office of Senator, it must be presumed, in the absence of proof, that they did not vote for any officer they were not legally entitled to vote for, but only voted for such as they properly could under the law; hence there is no evidence to establish the charge. But admitting for the sake of argument that these twenty-eight votes were illegally cast and for the sitting member, then it reduces his majority twenty-eight votes, leaving him a majority of two hundred and ninety-nine to be overcome. But your committee do not admit that such a subtraction is warranted by the evidence.

The same charge is made in relation to Montgomery county, but there is not a particle of evidence to substantiate the charge. On the contrary, it appears from all the evidence that the election in Montgomery county was legally and fairly conducted.

The sixth allegation is covered by the evidence in regard to affidavits, and is not sustained.

It is charged in the seventh allegation that more than one hundred men were allowed to vote for the sitting member on slips of paper containing their names, and did not present their registration papers; but it appears from the evidence that this was a perfectly legitimate transaction.

The law nowhere makes it incumbent upon the voter to present his registration papers; on the contrary, any registered voter is entitled to vote, whether he has his registration paper or not, but in order to avoid trouble and waste of time the Democratic party advertised that all voters who had lost their registration papers would be supplied with their registration numbers by applying at headquarters. This was done, and some four hundred or five hundred voters were supplied with their numbers and voted on them. But it appears that a large majority of those so voting voted the Democratic ticket, and if there was anything wrong in the transaction it would injure the contestant and reduce his vote; but your committee can discover nothing improper in this proceeding; there is nothing to show that those voting on numbers were not legal voters. But it appears that the Democratic party—whose candidate the contestant was—had a supervisor appointed by authority of an order from the Governor, and a supervisor appointed by the Federal Court, who were present at the board of appeals, and at the polls during the election, and that neither of them objected to the voting on numbers.

The general charge in the eighth allegation that the election was not fairly and impartially conducted by the officers in charge thereof, is no averment which this Senate can regard. It states no fact, but makes a broad, sweeping allegation, under which it is sought to introduce all sorts of hearsay evidence, and the opinions of various witnesses. It is not supposed that this Senate will pay the least regard to such allegations or such evidence. It is incumbent on the contestant to specify the points of unfairness and partiality, and to prove them. This charge is too vague and indefinite to warrant its consideration. Your committee would state, however, that throughout the evidence there can be found charges of partiality and unfairness, made by both sides against each other, but nothing more than is usual in all hotly contested elections.

It is charged in the ninth allegation, that one Sheridan, member of the board of appeals, assumed to act as chairman of the board without authority, and that by the aid of Mr. Fisher, his colleague, prevented the other member, Conradi, from examining applicants for registration, etc. The testimony reveals the fact, that not only Conradi, but

Lockhart and others examined applicants rigidly, and, by their own testimony, continued to do so until the termination of the election, although remonstrated with by Sheridan, on the ground that they were impeding the election, and greatly harrassing and annoying the voters. The board of appeals and revision was composed of Sheridan, Fisher and Conradi. By agreement of the majority, Sheridan and Fisher, the former acted as chairman of the board, which seems, to your committee, as legitimate and proper.

The tenth allegation charges that Sheridan, one of the board of appeals, during the ten days of registration, "acted as a runner for the Radical party," and "was employed in bringing to the registrar colord men for registration." There is no evidence to sustain this charge beyond the mere circumstance that Sheridan was an active participant in the conduct of the election, and was present at the place of registration during the ten days that the registering of voters was going on. That he did anything improper or incompatible with the position he occupied as a member of the board of appeals does not appear by the testimony of a single witness.

The charge in the eleventh allegation is similar to the one made in No. 8, viz., that Sheridan and Fisher, two members of the board of appeals, were incompetent and unfair in their official action. Your committee feel that no further notice of this charge is necessary than that embraced in their allusion to the eighth allegation.

An examination of the evidence in regard to the charge of intimidation made in the twelfth allegation forces your committee to the conclusion that the charge comes with exceeding bad grace from the contestant. In fact, it is shown that, with one exception, the only violence at the election was caused by the contestant in person. (See pages 220, testimony of J. H. Baker.) Special officer Chas. Reese (see pages 221) testifies that the contestant made an assault upon him and kicked him in the stomach when he (the witness) attempted to preserve order. A. W. Cuney (pages 183–4) also testifies to the actions of contestant. Taylor Burk (page 215), Chas. Johnson (pages 216–17), testify that the contestant drove a man named Lyle out of the line of voting, and that Lyle became frightened and did not vote. It is also in evidence that two other voters were driven out of the line and intimidated from voting (pages 224–5) by the contestant.

It is also in evidence that the contestant went blustering and threatening along the line of voters, and threatened to have blood. On the other hand, it is proven that when Squire Gammel, a colored man, was being hustled about by some colored men, the sitting member done all in his power to preserve order, and spoke to the people, advising them to interfere with no one, and his advice was followed.

The thirteenth allegation, that the number of tickets or ballots in the box was never ascertained by actual count, is entirely unsustained by the evidence. On the contrary, it appears from the record and tally lists that there was an actual count made as required by law. Otherwise, your committee do not see how the result could have been ascertained and the returns made. The language of the statute (Sec. 33) is as follows:

"That immediately upon the close of the polls on the last day of the election, the judges of election at each poll or voting place shall proceed to count the ballots in the presence of the registrar and two citizens of the county, and make a list of all the names of the persons and officers voted for, the number of votes for each person, the number of ballots in the box and the number of ballots rejected, and the reasons therefor."

The Legislature in this enactment undoubtedly intended to impose upon the officers having the charge of the conduct of the election, and canvassing the votes, a faithful observance of this and other provisions of law relating to elections, as well to secure the public as the rights of electors, but we cannot think that they intended that an omission to comply in any of these minor particulars, whether the same occurred through the ignorance or inadvertance of the judges of election, should have the effect to deprive a whole district of their suffrage. This would have the effect of punishing the innocent for the sins of the guilty. If the charge be true as alleged it would be an irregularity, but could not invalidate the election. We cannot but think that to hold the omission of these officers, through negligence, mistake or inadvertence to comply with all the directions of the statute, should have the effect to disfranchise the electors, would be unjust in the extreme, and, indeed, subversive of the fundamental principles of our government. It is in evidence, however, that the returns of the election, as required

by the statute, were properly made and signed by all the judges of the election, and it must be presumed, unless proven to the contrary, their return is correct, and that they did comply with the directions of the statute.

It is charged in the fourteenth allegation "that the board of appeals registered five hundred and four men without asking for any reason from them as to why they did not apply for registration to the registrar during the ten days of registration, * * * and that two-thirds of said number were negroes, and voted for the sitting member." The last charge in this allegation is disproved by the evidence (page 134), from which it appears from the record that two hundred and twenty-seven whites and two hundred and twenty-eight colored were registered, and most of these were for the city election and not for the election wherein the contestant and the sitting member were interested.

But your committee fail to find any statute which authorizes or requires the board of appeals to demand of any person appearing before them for registration, his reason for having failed to register during registration. It is the right of every citizen qualified to register to have his name placed on the registration list, and if he is unable to do so for any reason whatever during the period of registration, he can demand to be registered before the board of appeals, which is constituted partly for that purpose, and it would be an interference not warranted by law on the part of the board of appeals, to demand his reasons for having failed to appear before. Entertaining these views, your committee can find no bearing in the fourteenth allegation, upon the case.

It is charged in the fifteenth allegation that men who had served in the penitentiary for crime, and who had not in any manner known to the law been restored to the right of suffrage, voted for the sitting member. The only testimony in support of this allegation is that of Conradi, who says that two men, one named Scanlan, a white man, the other Byas, a colored man, had voted. It is not in evidence for whom they voted, nor that they had been in the penitentiary for any crime, or that if they had been in the penitentiary for crime, that they had not been restored to their privileges. This latter presumption must be held unless plainly disproved.

There is no direct evidence whatever—except in the case

of Miles Kennedy, which according to his own testimony was clearly an illegal vote, and should be deducted from the majority of the sitting member.

There is nowhere in the evidence any testimony to establish the charge that fraudulent votes were cast upon the registration papers of dead negroes. This is another of those charges which it was the task of the contestant to establish affirmatively, by sufficient, proper and specific evidence. This he has utterly failed to do. In the support of this allegation he might have produced the poll list, which is now in evidence before your committee, and have purged from it the names of all alleged dead men. His failure to do this forces your committee to the conclusion that the charge has no foundation in fact.

In regard to the seventeenth allegation, that some negroes who had not arrived at the age of majority were registered, and voted for the sitting member, your committee first considered the evidence of W. R. Baker (page 132), who testifies that three negroes, one named Cole Wicks, the others named George and Dan, all of whom were but nineteen years of age, were registered. He also states that he does not know whether they voted or not. Here again the examination of the poll list by the contestant would have disclosed the fact as to whether or not these minors voted. But as no evidence was introduced on that point, although the contestant had it in his power to prove the fact if they did vote, leads your committee to conclude that these minors did not vote at the election. The fact of minors having voted is also sought to be established by the testimony of E. C. Duer, page 105. There it is sought to prove that eight minors voted at the election in Harris county. But the testimony is vague, indefinite, hearsay and conflicting, and the witness does not know for whom the parties voted, nor that they voted at all. The following is a sample of the testimony of this witness:

"That Dunc Allen told him that Charlie Smith had told him (Dunc Allen) that if he could not get himself registered as a voter, he might vote on his step-father's papers, and he would never be detected in doing so. I know Charlie Smith. He is a red-headed Dutchman, and is clerk of the Criminal Court of Harris county."

In view of the alleged disposition to commit fraud, it appears from comparison, that it was not done at the last

election in Harris county, if an investigation of the evidence leads us to correct conclusions. The official returns show the following statement to be the result of all the elections held in Harris county since reconstruction:

In 1869, the Republican majority was..... 619
In 1871, the Republican majority was..... 412
In 1872, the Republican majority was..... 228

It is therefore clearly demonstrated that there has been gradually a falling off of the Republican majorities at every successive election, occasioned by an increase in the Democratic vote, and that in comparison with other counties changes such as these are attributable to a variety of causes; and it would be altogether unjust to ascribe the regular successive increase of the Democratic vote to the fraudulent practices of that party.

In regard to the additional allegations filed December 30, 1872, that the sitting Senator was ineligible in consequence of his holding the office of State Printer and postmaster of the city of Houston, your committee hereto append the resignation of the contestee and its acceptance, to take effect on the thirtieth of October, one week before the election was held, and at that date he ceased to be the official printer of the State. And in reply to the charge of his ineligibility on account of his holding a commission from the United States as postmaster at Houston, your committee would call the attention of the Senate to the third article of the Constitution of the State. section thirty, which specially excepts postmasters, and directly provides their eligibility. It is as follows: "*Provided*, that officers of militia, to which there is attached no annual salary, the office of postmaster, notary public, and the office of justice of the peace, shall not be deemed lucrative, and that one person may hold two or more county offices if so provided by the Legislature."

The facts presented to disprove this allegation need no comment, and it is singular that the office especially excepted by the Constitution should have been made a ground for contest, and to impose upon the time of this committee.

For the above and foregoing reasons alone, then, we submit that the sitting member is clearly entitled to his seat, and that his election must stand.

But in addition to the legal objections to the contestant's claims, we have the further insurmountable barrier

that the testimony wholly fails to make out his case. For when a party controverts an election, he must make full proof of the fact that he, and not the party who holds the seat, is elected.

In the case of Easton v. Scott (Contested Elections, Ca. 278), it is well said by the Committee on Elections that "In cases where the person returned comes rightfully by the certificate of election, then he ought to keep his seat till it is shown that he is not entitled to it." Being rightfully in possession of the seat, the legal presumption is that he was duly elected. And "where the law raises a presumption in favor of the fact, the contrary must be fully proven." (1 Stark. Ev., 452; Met. & Ing. Ed., 499, top page.) "But a mere preponderance of evidence, such as would induce a jury to incline to the one side rather than the other, is frequently insufficient. It would be so in all cases where it fell short of fully disproving a legal right once admitted or established, or of rebutting a presumption of law." (Ib., 451.)

Tested by these well recognized principles of evidence, the testimony wholly fails to make out the contestant's case. For not only do we find the entire absence of evidence sufficient to rebut the legal presumption in favor of the sitting member's election, but on a fair scrutiny of the testimony (including even the hearsay), the scales are clearly inclined in favor of the sitting member to his seat. And if to this we add the fact above stated, that evidence to be sufficient to rebut or overthrow the presumption of law in favor, arising from the fact of the legal possession of his seat, must fully disprove and satisfy the mind to the contrary, to the entire exclusion of every reasonable doubt, this contestant may truly be said not to have a *locus standi in judicio.*

Therefore, from a view of the whole case, the undersigned members of your committee find it impossible to satisfy their minds that the contestant has shown himself entitled to the seat he claims. They present the following resolution, and recommend its adoption:

Resolved, That Hon. J. G. Tracy is entitled to retain his seat as Senator from the Fourteenth Senatorial District.

A. J. FOUNTAIN,
HENRY RAWSON.

Senator Word, of the same committee, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Privileges and Elections, to whom was referred the petition of Charles Stewart, contestant, against J. G. Tracy, the sitting Senator from the Fourteenth Senatorial District of the State, have had the matter under consideration and investigation since an early day of the meeting of the present Legislature. They have examined orally and by deposition one hundred and twenty-one witnesses, the testimony extending over two hundred and sixty-five pages of printed matter. And after a careful examination of all the testimony in the case, the undersigned regrets that he cannot concur in either of the reports submitted by other members of the committee.

The conclusion to which the undersigned has come is, that the election held in Harris county, being one of the counties composing the Fourteenth Senatorial District, on the fifth, sixth, seventh and eighth days of November, 1872, was tainted with fraud to such a degree as to vitiate and annul the said election for Senator in that district, and that neither the sitting member nor the contestant is entitled to a seat in this body, and that the said election ought to be declared null and void and the seat vacant. And while the undersigned is brought to this conclusion from a careful examination of the voluminous testimony, he is not convinced that either of the parties contesting the election participated in the frauds perpetrated.

There was, however, in the judgment of the undersigned, such a variance from the requirements of the law on the part of the judges of the election, as to vitiate and render the election void.

Without referring to particular witnesses, the testimony shows that a large number of voters came in, and were brought in, from counties outside of the district; that these voters were permitted to vote, some on affidavits and some on numbers. By section thirteen, Acts of 1870, page 130, any judge of election shall have power to administer oaths to any persons offering to vote; and by section seventeen, same act, page 131, any person offering to vote may be required by the judges of election to make oath and declare that he is the person to whom was issued the registration certificate, or other paper upon which he offers to vote, and that he has not voted at any other poll or voting place. And yet the judges refused to swear

these parties, although requested so to do. (See testimony of Robert Lockhart, page 14.)

The judges also refused to have the persons offering to vote identified, although requested so to do. (See same testimony.) One of the judges, Sheridan, refused to have the party identified, saying that the party had a remedy hereafter. It also appears that a number of persons voted on affidavits, whose names do not appear on the registration lists. See Clemow's testimony, page 137, where he says twenty-five persons voted upon affidavits whose names are not found on the registration books; and see also the testimony of H. L. Berg, pages 256 to 259, where he says some fifty-eight others do not appear on the registration books. Now, when it appears that the judges refused to swear these persons as to their identity, or permit them to be interrogated, fraud is too palpable to be doubted.

It also appears from the testimony that minors were permitted to vote, though objected to on the ground of minority. And while the eveidence tends to show that the persons thus fraudulently voting were mostly, if not altogether, colored voters, and that almost all the colored voters cast their ballots for the sitting member, it is not made clear to my mind how many of these votes were cast for the sitting member.

It also appears that Sheridan, the principal official judge, was comparatively a stranger there. See Conradi's testimony, page 20, and see his own testimony, page 145, where he says he had resided in Houston about two years; same page, he says he was employed principally as mail agent of the government. If he was faithful in that office, it was not likely he could have formed an extensive acquaintance with the people of Harris county, and more especially with the colored people, who have but little to do with matters requiring the attention of a mail agent. And a further reason of his want of an acquaintance with the colored people, is that he states there were Republican white clubs, and that he belonged to one of the white clubs. (See his testimony, page 149.)

From these facts proven by the testimony of Sheridan himself, it is not probable he would have had a more extensive acquaintance with the colored voters than Lockhart (see page 11), an old citizen living there since 1838, and Conradi, a merchant of some seven years standing,

(see Conradi's testimony, page 18), and Dugat, of three years' residence (see his deposition, page 26). And yet a large number of the colored people were vouched for by this same Sheridan, one of the judges, who professed to be the principal. (See Lockhart's testimony, page 13.) And this man was prevailed upon by Col. Tracy, the sitting member, to occupy this position. (See Sheridan's testimony, page 150.) And so with another one of these judges, a registrar, John Clemow. He was a comparative stranger; he had not resided in Harris county two years. (See his testimony, page 135.) He came to Houston with Noyes' circus (see his testimony, page 138), yet this man joined with Sheridan to put Dugat out of the room. Dugat was appointed by the Democratic Executive Committee to be present, and these men put him out of the room early in the morning of the first day (see his testimony, page 26), and they kept him out until they received a telegram from the Attorney General stating that he had a right to be there. He returned, and when he returned he was told by Clemow that he would permit him to remain in the room, "but that he must remain quiet and take no part, or else he would have him put out." Thus two of the parties, the judge, Sheridan, and Clemow, the registrar, comparative strangers, but little identified with the great interests of the people, tyrannized over the other members in such a way as to show great partiality, unfairness and fraud upon the rights of electors.

As I have before stated, I do not make a synopsis of the testimony. It is in print and can be examined by each Senator for himself. Nor do I deem it necessary to point out discrepancies, mistakes or contradictions which appear in the testimony of some of the witnesses. I have confined my remarks to the testimony of witnesses unimpeached in any manner on the part of contestant, and to the testimony of the judges, Sheridan and Clemow themselves, and I think enough is shown by this testimony to brand the election with fraud. Nor have I gone into any legal argument as to the admissibility or inadmissibility of testimony, because the conclusion which I have reached renders such examination unnecessary. The strict rules of evidence which are adhered to in courts of law, were in some degree relaxed, but not more so than in similar cases of contested elections in Congress. Nor do I believe these rules were departed from further than was necessary to elicit the facts.

The fourth section of the twelfth article of the Constitution provides that the vote shall be by ballot; and no means are provided by the election laws to ascertain how any voter casts his vote, and as a consequence no direct testimony can be had on that subject, unless it is where the voter himself divulges how he voted. The testimony in this case shows the respective parties had a different kind of ticket; the Republican party had "a light red or pink checkered-back ticket; it could readily be distinguished from the other ticket." (See Lockhart's testimony, pages 15-16.) It is stated by this witness (who was one of the supervisors), with a very few exceptions, the colored people voted that (the pink-backed) ticket. (See same page.) See also the testimony of Sheridan, one of the judges, page 149, where he says, "I should judge that there were over five hundred white men, more or less, voted for Mr. Tracy in that election." It appears also from the testimony that four thousand one hundred and seventy-five votes were polled at the election in Harris county; and if, as the testimony tends to show, most of the colored voters cast their ballots for the sitting member, Col. Tracy; and if, as the testimony further tends to show, most, if not all the fraudulent votes polled, were cast for him, the presumption is strong that he did not receive a majority of the legal votes. But in so grave a question as that of defeating the will of the people, the undersigned is not willing to rely on presumptions; and being thoroughly convinced that the election in Harris county was fraudulently conducted, the undersigned recommends the adoption of the following resolution:

Resolved, That the election for Senator from the Fourteenth Senatorial District, for a seat in the Senate of the Thirteenth Legislature, held on the fifth, sixth, seventh and eighth days of November, 1872, was fraudulent, and the sitting member, J. G. Tracy, is not entitled to a seat in this body under said election, and that the seat is vacant.

T. J. WORD,
A member of the Committee.

A message was received from the House informing the Senate that the House had adopted the concurrent resolution requesting the Governor not to pardon Santanta and Big Tree, two Indian chiefs, should application be made therefor.

The hour having arrived for the consideration of the special order, on motion of Senator Ruby, it was postponed until the pending business was disposed of.

Senator Finlay in the chair.

Senator Fountain moved to make the reports of Committee on Privileges and Elections the special order for to-morrow at 11 o'clock, A. M.

Senator Dillard proposed to amend the motion by saying Monday at 11 o'clock, A. M., and have three hundred copies printed.

Senator Pyle proposed to make it Tuesday.

On motion of Senator Broughton, the reports were postponed, and made special order for Tuesday, fifteenth instant, at 11 o'clock A. M., two hundred copies ordered printed, and the parties allowed to appear in person or by counsel, within the bar of the Senate, by the following vote:

Yeas—Senators Baker, Broughton, Ford, Flanagan, Fountain, Franks, Gaines, Latimer, Pyle, Rawson, Randle, Ruby, Sayers, Tendick and Tracy—15.

Nays—Senators Avinger, Ball, Dillard, Evans. Finlay, Henry, King, Shelley, Swift, Word and Mr. President—11.

The special order was then taken up, viz., Senate bill No. 181, "An act regulating contested elections," with report from Judiciary Committee No. 1, recommending a substitute. Substitute adopted, and bill read second time.

Senator Franks proposed the following amendments:

Insert the word "thirty," in line six, section one, after the word "within."

Section one, line twelve, insert the word "ten."

Adopted.

Senator Shelley proposed to amend as follows:

Section four, line six, fill the blank with "twenty."

Amend section four by striking out all after the word "mode," in line eight, down to and including the word "resides," in line ten.

Adopted.

Senator Franks offered the following amendment: Section four, line twelve, insert the words "tally lists."

Adopted.

On motion of Senator Franks, the bill was postponed, and made special order for to-morrow at 12 o'clock M.

A message was received from the House informing the Senate that the House had passed the following bills:

House bill No. 173, "An act to prohibit the sale of intoxicating liquors within two miles of the institution of learning situated at Woods, in Panola county."

House bill No. 125, "An act to prescribe the mode and manner of designating exempted homesteads in certain counties."

House bill No. 227, "An act to incorporate the town of Denton."

House bill No. 473, "An act to authorize the county of Bell to issue interest-bearing bonds."

House bill No 105, "An act for the relief of certain citizens of Limestone and Walker counties."

House bill No. 205, "An act concerning the acquisition and alienation of lands by railroads, and to prevent landed monopolies."

House bill No. 261, "An act to amend an act entitled an act to adopt and establish a penal code for the State of Texas, approved August 26, 1856."

By leave, Senator King introduced a bill to be entitled "An act for the relief of certain pre-emption settlers in Bandera county." Read first time and referred to Judiciary Committee No. 1.

Senator Latimer, chairman of the Committee on Enrolled Bills, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Enrolled Bills beg leave to report that they have examined and carefully compared Senate bill No. 5, "An act for the relief of the heirs and assigns of Haynes Crabtree, deceased," and Senate bill No. 48, "An act authorizing the patenting of a certain bounty warrant therein named," and find the same correctly enrolled.

H. R. LATIMER, Chairman.

On motion of Senator Fountain, the rules were suspended to take up out of its order House concurrent resolution requesting the Governor not to pardon Santanta and Big Tree, if application be made.

The resolution was read and referred to the following special committee, viz.: Senators Fountain, King and Ball.

House bill No. 97, an act entitled "An act to regulate the conduct of public officers," was read third time.

Senator Fountain moved to reconsider the vote taken yesterday to strike out section four.

The hour having arrived for the special order, viz., the consideration of bills of a private nature, the same was taken up.

Senator Evans called up House bill No. 439, "An act to authorize the Police Court of Collin county to levy and collect a special tax for the purpose of building a court house and jail." The bill was read second time and passed to third reading; rules suspended, read third time and passed.

Senator Ford called up House bill No. 442, "An act to incorporate the town of Mexia, in Limestone county." Bill read second time and passed to third reading; rules suspended, read third time and passed.

Senator Flanagan called up Senate bill No. 7, "An act to incorporate the Colorado, Austin and Lampasas Railroad Company," with amendments by the House.

The question being, Shall the Senate concur in the amendments by the House? the same was postponed until Friday next at 11 o'clock, and made the special order for that hour.

On motion of Senator Word, the Senate adjourned to 10 o'clock A. M. to-morrow.

SENATE CHAMBER,
AUSTIN, TEXAS, April 3, 1873.

Senate met pursuant to adjournment. Roll called; quorum present. Prayer by the chaplain.

On motion of Senator Baker, the secretary of the Senate was granted leave of absence for to-day.

On motion of Senator Franks, Senator Tracy was granted leave of absence until next Monday.

Journal of yesterday read and adopted.

A message was received from the House informing the Senate that the House had passed the following bills:

Senate bill No. 174, "An act to reorganize the town of Sherman, in Grayson county, Texas, and incorporate said town as the city of Sherman."

Senate bill No. 109, "An act to incorporate the town of Giddings, in Washington county."